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Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
New Jersey Board of Nursing
124 Halsey Street, 6th Floor, Newark, NJ 07102
www.njconsumeraffairs.gov/medical/nursing.htm



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June 29, 2015

VIA REGULAR AND CERTIFIED MAIL

Gabrielle L Nesmith, C.H.H.A.
139 Baker Avenue
Atco, NJ 08004

RE: **I/M/O Gabrielle L Nesmith, C.H.H.A.**
Final Order of Discipline

Dear Ms. Gabrielle L Nesmith:

Enclosed please find a copy of the Final Order of Discipline ("FOD") filed with the New Jersey State Board of Nursing ("Board") in the above referenced matter. Please read this Order carefully, as you may be subject to additional discipline if you do not comply with the terms of the Order. You can obtain information about the status of your certification by calling the Board office at (973) 504-6430.

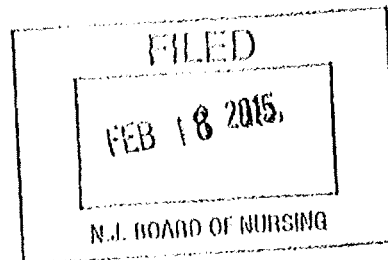
Sincerely yours,

Joanne Leone, Acting Executive Director,
State Board of Nursing

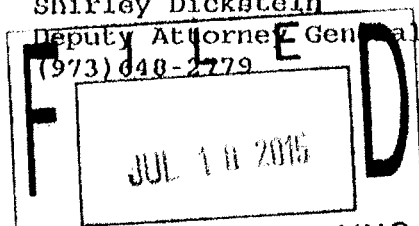
Encl.

cc: Shirley Dickstein, DAG

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Gabrielle L. Nesmith, C.H.H.A.
Certificate No. 26NH14249200

HOMEMAKER-HOME HEALTH AIDE
IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

PROVISIONAL ORDER OF
DISCIPLINE

☒ FINAL ORDER OF DISCIPLINE
(Finalized by default
on July 10, 2015/07/10/15)

FINAL

This matter was opened to the New Jersey State Board of Nursing (the "Board") upon receipt of information which the Board has reviewed and upon which the following preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Gabrielle L. Nesmith ("Respondent") is a certified homemaker-home health aide in the State of New Jersey and has been a licensee at all times relevant hereto. (Exhibit A).

2. Upon receipt of a flagging notice indicating that Respondent was arrested on May 18, 2014 by the New Jersey State Police for violation of N.J.S.A. 2C:35-10A(4), Possess Marijuana/Hash Under, and N.J.S.A. 2C:36-2, Possession of Drug Paraphernalia, the Board sent a letter of inquiry, requesting certain information and submission of documents, to Respondent's address of record in Atco, New Jersey, via regular and certified mail on or about June 6, 2014. A response was due within twenty (20) days. The certified mailing was delivered and signed for on June 9, 2014, the regular mailing was not returned. (Exhibit B).

3. To date, Respondent has not responded to the Board's request for information.

CONCLUSIONS OF LAW

Respondent's failure to respond to the Board's request for information constitutes a failure to cooperate with a Board investigation, in contravention of N.J.A.C. 13:45C-1.2 and 1.3, which the Board deems professional misconduct pursuant to N.J.S.A. 45:1-21(e), subjecting Respondent to disciplinary action pursuant to N.J.S.A. 45:1-21(h).

Certified homemaker-home health aides provide care to some of the most vulnerable members of our society - the infirm elderly. They have unfettered access to the homes, personal

possessions, bank accounts and credit cards of their elderly patients. Possible addiction to illegal substances or alcohol raise particular concern as certificate holders who have not obtained appropriate treatment may pose a risk to the safety and security of those individuals entrusted to their care. Respondent's arrest for drug related conduct combined with her lack of cooperation with the Board's inquiry are sufficient indication that Respondent's continued practice as a homemaker home health aide may jeopardize the safety and welfare of the public such that diagnostic testing and monitoring or psychological evaluation are warranted as a condition of continued certification pursuant to N.J.S.A. 45:1-22(e) and (f) and N.J.S.A. 45:1-21(1).

ACCORDINGLY, IT IS on this 18th day of February, 2015,
ORDERED that, UPON THE FILING OF A FINAL ORDER OF
DISCIPLINE:

1. Respondent's certificate to practice as a homemaker-home health aide will be suspended until such time as Respondent cooperates fully with the Board's investigation by providing the Board with the information requested in the Board's letter of inquiry and demonstrates compliance with paragraph 2 below.

2. Respondent shall:

- a. Provide the Board with evidence that she is capable of discharging the functions of a certificate holder in a manner consistent with

the public's health, safety and welfare and that she is not then suffering from any impairment or limitation resulting from the use of any addictive substance which could affect her practice.

- b. Provide the Board with an in-depth, current evaluation from a licensed clinical alcohol and drug counselor or psychiatrist or psychologist knowledgeable in addiction therapy who is aware of the circumstances of Respondent's arrest and this Provisional Order of Discipline and who has been pre-approved by the Board. Respondent shall provide documentation that she has complied with all recommendations of the licensed clinical alcohol and drug counselor or psychiatrist or psychologist.
- c. Affirmatively establish her fitness, competence and capacity to re-enter the active practice as a certified homemaker-home health aide within New Jersey.

3. Upon the filing of a FINAL ORDER OF DISCIPLINE, Respondent shall refrain from engaging in the practice as a homemaker-home health aide and shall not represent herself as a homemaker-home health aide until such time as her certification is reinstated. Any practice in this State prior to such reinstatement shall constitute grounds for a charge of unlicensed practice.

4. Respondent is provisionally assessed a civil penalty in the amount of two hundred dollars (\$200). Payment shall be made by certified check, bank cashier check, or money order payable to "State of New Jersey," or by wire transfer, direct

deposit, or credit card payment delivered or mailed to George Hebert, Executive Director, State Board of Nursing, P.O. Box 45010, Newark, New Jersey 07101. Any other form of payment will be rejected and will be returned to the party making the payment. Payment shall be made no later than fifteen (15) days after the date of filing of a FINAL ORDER OF DISCIPLINE. In the event Respondent fails to make a timely payment, a certificate of debt shall be filed in accordance with N.J.S.A. 45:1-24 and the Board may bring such other proceedings as authorized by law.

5. The within order shall be subject to finalization by the Board at 5:00 p.m. on the 30th day following entry hereof unless Respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

- a) Submitting a written request for modification or dismissal to George Hebert, Executive Director, State Board of Nursing, 124 Halsey Street, Sixth Floor, P.O. Box 45010, Newark, New Jersey 07101.
- b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.
- c) Submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor or offered in mitigation of penalty.

6. Any submissions will be reviewed by the Board and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a

supplemental submission during the thirty-day period, or if the Board is not persuaded that the submitted materials merit further consideration, a FINAL ORDER OF DISCIPLINE will be entered.

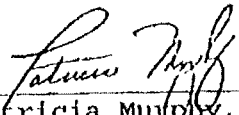
7. In the event that Respondent's submissions establish a need for further proceedings, including, but not limited to an evidentiary hearing, Respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein may serve as notice of the factual and legal allegations in such proceeding. Further, in the event a hearing is held and upon review of the record, the Board shall not be limited to the findings, conclusions and sanctions stated herein.

8. In the event that the Board receives no written request for modification or dismissal within 30 days following entry of this Provisional Order of Discipline, without further Board review, all referenced preliminary Findings of Fact and Conclusions of Law and all provisional sanctions or penalties imposed by this Order shall automatically become the Final Decision and Order of the Board. Thereafter, Respondent's failure to comply with any sanction or penalty imposed by this Order shall be considered a violation of a Board Order in

contravention of N.J.S.A. 45:1-21 (e) and (h) and N.J.A.C. 13:45C-1.4 and may subject Respondent to additional sanction and/or penalty.

9. The Board reserves the right to initiate disciplinary proceedings based upon any information that Respondent ultimately provides in response to the letter of inquiry or upon any new information the Board receives.

NEW JERSEY STATE BOARD OF NURSING

By:  Ph.D., APN
Patricia Murphy, Ph.D., APN
President